

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DUANE E. SPIES)	
Claimant)	
VS.)	
)	Docket Nos. 213,761 & 217,791
SALINE COUNTY, KANSAS)	
Respondent)	
AND)	
)	
KANSAS WORKERS RISK COOP FOR COUNTIES)	
Insurance Carrier)	

ORDER

Claimant appealed the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 11, 1997.

ISSUES

In claimant's brief, before the Appeals Board, the claimant requested review of the following issues:

- (1) Whether claimant suffered an injury to his neck that arose out of and in the course of his employment with the respondent.
- (2) Whether claimant gave respondent timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both issues raised by the claimant grant the Appeals Board jurisdiction to review a preliminary hearing Order. See K.S.A. 44-534a, as amended.

(1) Before addressing the merits of this case, the Appeals Board finds a brief history is necessary to understand claimant's claim for workers compensation benefits. The claimant originally filed an Application for Hearing on June 17, 1996, that alleged a date of accident of "April 10, 1996, and/or each working day thereafter." Claimant alleged he injured his back while lifting horse panels at work. Claimant requested a change in treating physician to an orthopedic specialist and temporary total disability compensation.

A preliminary hearing was held on November 7, 1996, and the Administrative Law Judge, in a preliminary hearing Order dated November 12, 1996, denied claimant's request to change the treating physician but granted claimant's request for temporary total disability compensation for a period from October 24, 1996, until November 7, 1996. In the preliminary hearing transcript, the Administrative Law Judge clarified that he had found the claimant had proved he suffered a low back injury on April 10, 1996, but had failed to prove that his neck complaints were work related.

Thereafter, the claimant filed an Application for Hearing on November 15, 1996, that alleged a date of accident of "07-29-96 and/or each working day thereafter and/or August 20, 1996, and/or each working day thereafter." In this application, claimant alleged injuries to his neck, back, both shoulders and upper spine caused by repetitive movement. This application was assigned Docket No. 217,791.

On December 16, 1996, claimant filed an Application for Preliminary Hearing seeking temporary total disability benefits, a change in authorized physician, unauthorized medical expense and payment of past medical expenses relating to treatment of claimant's neck complaints. The Administrative Law Judge held a preliminary hearing in reference to this application on February 13, 1997. He then followed with a preliminary hearing Order dated March 11, 1997, that is the subject of this appeal. In the March 11, 1997, preliminary hearing Order, the Administrative Law Judge sets out his findings and conclusions in some detail. The Appeals Board finds it is not necessary to repeat those findings and conclusions in this Order. The Appeals Board concludes those findings and conclusions are accurate and appropriate and, therefore, adopts them as if specifically set forth in this Order. Specifically, the Appeals Board finds that at this stage of the proceedings the claimant has failed to prove that his alleged neck injury is causally related to the September 11, 1996, work accident. Accordingly, the preliminary hearing Order of the Administrative Law Judge that denied claimant preliminary hearing benefits in Docket No. 217,791 is affirmed.

(2) Because of the above finding, the Appeals Board finds it does not need to address the notice issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated March 11, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director